

CONTRACT TO GROUND LEASE – 9%¹
(North Hill)

This **CONTRACT TO GROUND LEASE – 9%** (this “**Agreement**”) is made and entered into as of this _____ day of _____, 2017 (the “**Effective Date**”) by and between **FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY**, a political subdivision of the Commonwealth of Virginia (the “**FCRHA**”), and **CHPPENN I, LLC**, a Virginia limited liability company (together with any assignee permitted under this Agreement, “**CHPPENN**”; **CHPPENN** and the **FCRHA**, are each a “**Party**” and, collectively, the “**Parties**”).

RECITALS:

- R-1. The FCRHA is the fee simple owner of an approximately 48 acre tract of land in Fairfax County, Virginia, having the Fairfax County Tax Map No. 92-4 ((1)), parcel 82A (the “**Existing County Land**”).
- R-2. The Existing County Land is comprised of (a) the Woodley Hills Estates manufactured home community, which occupies approximately 15 of the 48 acres, and (b) an approximately 33-acre unimproved tract of land known as North Hill and described on **Schedule A** attached hereto (such 33-acre tract, the “**Property**”).
- R-3. In 2012, the FCRHA received an unsolicited proposal from a developer under the Public Private Education Facilities and Infrastructure Act of 2002, Virginia Code Ann. §§ 56-575.1 *et seq.* (such law, the “**PPEA**”) proposing to redevelop the Property as a mixed income, affordable housing and market rate housing community comprised of multifamily apartments and townhouses.
- R-4. In accordance with the PPEA and the FCRHA PPEA guidelines, the FCRHA then issued a “Request for Competing Proposals”, RCP number RFCP 2000000000 in 2013 (the “**RCP**”). The RCP included criteria calling for, among other things, development of approximately 350 or more units on a portion of the Property, with the undeveloped balance to be preserved as parkland.
- R-5. CHPPENN submitted a response to the RCP which was determined to be the most responsive to the RCP. In its response, CHPPENN proposed, among other things, the construction of approximately 329 affordable multifamily units and approximately 144 for-sale townhomes (the “**For-Sale Townhomes**”) on a portion of the Property. In addition, a portion of the For-Sale Townhomes would be affordable dwelling units under Fairfax County’s affordable dwelling unit ordinance.
- R-6. After further negotiations with the FCRHA, CHPPENN proposed the construction of approximately 279 multi-family dwelling units, including approximately 60 senior independent living units, in five separate, high quality, urban designed buildings with

¹ **Contracts for 4% (senior) and 4% will refer to those figures.**
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parking that is structured in part (the “**Affordable Housing Units**”) on one or more portions of the Property.

- R-7. In connection with the RCP and the overall revitalization of the Property and surrounding area, the FCRHA desires to sell a portion of the Property, as approximately described on **Schedule B** attached hereto (the “**Sale Property**”), to a purchaser to be acceptable to the FCRHA (the “**Purchaser**”) pursuant to a purchase and sale agreement to be in form and substance reasonably acceptable to the FCRHA (the “**Purchase Agreement**”).
- R-8. The Parties also intend that the remainder of the Property be retained, developed and maintained for use as a public park (the “**Park**”). Development of the For-Sale Townhomes on the Sale Property, the Affordable Housing Units on the Ground Lease Premises (as hereinafter defined) and other portions of the Property intended to be leased pursuant to the Other Ground Leases (as hereinafter defined), and the Park shall be referred to as the “**Project**”.
- R-9. On March 25, 2015, the FCRHA and CHPPENN entered into an Interim Agreement which allowed CHPPENN to access the Property and perform diligence with regard to the Project.
- R-10. The Project is now subject to Rezoning / Final Development Plan RZ/FDP 2016-MV-014 and Proffered Condition Amendment PCA 78-V-125, approved by the Board of Supervisors of Fairfax County, Virginia on [February 14, 2017]² (collectively, the “**Land Use Approvals**”) and certain proffers dated [_____, 201_] ³ accepted in connection therewith (the “**Proffers**”).
- R-11. Simultaneously with the execution of this Agreement, the FCRHA and CHPPENN have entered into two additional Contracts to Ground Lease which, subject to CHPPENN satisfying certain conditions precedent as set forth in said contracts, provide that CHPPENN, or its permitted subsidiary, affiliate or assignee, will enter into two (2) ninety-nine year ground leases for portions of the Property (collectively, the “**Other Ground Leases**”).
- R-12. The FCRHA and CHPPENN agree that, subject to CHPPENN satisfying certain conditions precedent as set forth in this Agreement below, CHPPENN, or its permitted subsidiary, affiliate or assignee, will enter into a ninety-nine year ground lease in the form attached as **Exhibit A** for the Ground Lease Premises (the “**Ground Lease**”).
- R-13. The FCRHA and CHPPENN desire to enter into this Agreement setting forth CHPPENN’s option to enter into the Ground Lease for the Ground Lease Premises upon the satisfaction of certain conditions, as hereinafter set forth.

NOW, THEREFORE, for and in consideration of the mutual promises of the Parties and of other good and valuable consideration, the receipt and sufficiency of which are hereby

² Feb. 14, 2017 is projected approval date; to be confirmed.

³ To be updated as proffers are finalized.

acknowledged, the FCRHA and CHPPENN intending to be legally bound do hereby agree as follows:

Section 1. GRANT OF OPTION.

1.1 Ground Lease Premises. The FCRHA hereby grants to CHPPENN an option to lease the Ground Lease Premises, subject to all of the terms and conditions of this Agreement. The term “**Ground Lease Premises**” shall mean (a) the real property (the “**Land**”) more particularly described in *Exhibit A* of the Ground Lease, (b) all improvements, equipment and fixtures located on the Land at the time of the Closing (as defined in Section 7.1 below); and (c) any entitlements, governmental approvals, permits, and other intangible property associated with the Land or the improvements, equipment and fixtures located thereon owned by the FCRHA.

1.2 Option. The option described in Section 1.1 is referred to in this Agreement as the “**Option.**”

1.3 Memorandum of Option. Concurrently with the execution of this Agreement, the FCRHA shall execute, acknowledge and deliver to CHPPENN a memorandum of option in a recordable form (the “**Option Memorandum**”), which Option Memorandum may be recorded by CHPPENN in the Official Records of Fairfax County, Virginia (the “**Official Records**”). No later than five (5) days after the Option has expired or terminated, CHPPENN shall deliver to the FCRHA for recordation, duly signed and notarized by CHPPENN, documents sufficient to confirm the expiration or termination of the Option and the termination of the recorded Option Memorandum, and otherwise in recordable form and reasonably acceptable to the FCRHA (and this obligation of CHPPENN shall survive expiration or termination of this Agreement). In the event CHPPENN records the Option Memorandum in the Official Records, CHPPENN shall be responsible for payment of all fees and taxes associated with such recording and with the recording of the termination of the Option Memorandum. The relationship between the FCRHA and CHPPENN shall be governed solely by the provisions of this Agreement and not by the Option Memorandum.

1.4 Effect of Agreement; Interest in Real Property. The Parties intend that this Agreement is given by the FCRHA to CHPPENN as an option to lease the Ground Lease Premises. The Parties intend that this Agreement creates a valid and present encumbrance on the Ground Lease Premises in favor of CHPPENN, effective as of the Effective Date, subject to any and all liens or encumbrances disclosed in the Official Records. Therefore, the Option shall be deemed an encumbrance upon the Ground Lease Premises during the term of this Agreement effective as of the Effective Date and shall be binding upon and inure to the benefit of each of the Parties hereto and their respective successors and assigns (subject to Section 10.7 below).

Section 2. INDEPENDENT CONSIDERATION.

2.1 Consideration. In consideration of and concurrently with the FCRHA entering into this Agreement, CHPPENN agrees to pay to the FCRHA the sum of Ten Dollars (\$10.00) as “independent consideration” for the Option (the “**Consideration**”). The Consideration has been bargained for and agreed to as separate and independent consideration for CHPPENN’s option to lease the Ground Lease Premises pursuant to the terms herein, and for the FCRHA’s execution

and delivery of this Agreement. The Consideration shall be deemed fully earned by the FCRHA upon receipt, and shall be considered non-refundable to CHPPENN.

Section 3. TERM; EXTENSION PERIOD; EXERCISE OF OPTION.

3.1 Term of Agreement. The term of this Agreement (the “**Term**”) shall commence on the Effective Date and shall expire on 5:00 p.m. on August 1, 2017 (the “**Initial Expiration Date**”). The Initial Expiration Date, as the same may be extended as provided in Section 3.2 below, is hereafter referred to as the “**Expiration Date**”.

3.2 Right to Extend. (a) If and on the express condition that CHPPENN has received an award of Tax Credits (as hereinafter defined) on or before the Initial Expiration Date, then upon such receipt the Term of this Agreement shall automatically be extended until December 1, 2018.

(b) If (i) CHPPENN has not received an award of Tax Credits on or before July 1, 2017, (ii) this Agreement is then in full force and effect and CHPPENN is not then in default beyond any applicable notice and cure period under this Agreement, and (ii) CHPPENN has given the FCRHA notice in writing of CHPPENN’s election to extend the Term of this Agreement no less than ten (10) days before the Initial Expiration Date, CHPPENN shall have the right to extend the Term of this Agreement until 5:00 p.m. on August 1, 2018 (the “**Second Expiration Date**”); provided, however, that CHPPENN shall re-apply for the Tax Credits and equity and financing as required pursuant to Section 8.3.

(c) If CHPPENN has extended the Term of this Agreement to the Second Expiration Date and thereafter receives an award of Tax Credits (as hereinafter defined) on or before the Second Expiration Date, then upon such receipt the Term of this Agreement shall automatically be extended until December 1, 2019.

(d) If (i) CHPPENN has extended the Term of this Agreement to the Second Expiration Date but has not received an award of Tax Credits on or before July 1, 2018, (ii) this Agreement is then in full force and effect and CHPPENN is not then in default beyond any applicable notice and cure period under this Agreement, and (iii) CHPPENN has given the FCRHA notice in writing of CHPPENN's election to extend the Term of this Agreement no less than ten (10) days before the Second Expiration Date, CHPPENN shall have the right to extend the Term of this Agreement until 5:00 p.m. on August 1, 2019 (the “**Third Expiration Date**”); provided, however, that CHPPENN shall re-apply for the Tax Credits and equity and financing as required pursuant to Section 8.3.

(e) If CHPPENN has extended the Term of this Agreement to the Third Expiration Date and thereafter receives an award of Tax Credits (as hereinafter defined) on or before the Third Expiration Date, then upon such receipt the Term of this Agreement shall automatically be extended until December 1, 2020.

(f) If and on the express conditions that (i) CHPPENN has extended the Term of this Agreement to the Third Expiration Date but has not received an award of Tax Credits on or before July 1, 2019, (ii) this Agreement is then in full force and effect and CHPPENN is not then in default beyond any applicable notice and cure period under this Agreement, and (iii) CHPPENN

has given the FCRHA notice in writing of CHPPENN's election to extend the Term of this Agreement no less than ten (10) days before the Third Expiration Date, CHPPENN shall have the right to extend the Term of this Agreement until 5:00 p.m. on August 1, 2020 (the “**Fourth Expiration Date**”); provided, however, that CHPPENN shall re-apply for the Tax Credits and equity and financing as required pursuant to Section 8.3.

(g) If CHPPENN has extended the Term of this Agreement to the Fourth Expiration Date and thereafter receives an award of Tax Credits (as hereinafter defined) on or before the Fourth Expiration Date, then upon such receipt the Term of this Agreement shall automatically be extended until December 1, 2021 (the “**Outside Expiration Date**”).

(h) Notwithstanding anything to the contrary contained in this Agreement, in no event shall the Expiration Date be extended to a date beyond the Outside Expiration Date.

3.3 Condition to Right to Exercise. CHPPENN may exercise the Option only if all of the following conditions have been met: (i) all of the conditions precedent set forth in Section 8.1 (except as waived (to the extent waivable) at the sole discretion of CHPPENN), Section 8.2 (except as waived at the sole discretion of the FCRHA), and Section 8.3 (except as waived at the sole discretion of the FCRHA) below have been satisfied; and (ii) CHPPENN has otherwise performed or satisfied all of its obligations under this Agreement.

3.4 Exercise Notice. CHPPENN shall exercise the Option (if at all) at any time during the Term, provided CHPPENN has satisfied the conditions set forth in Section 3.3 above to the FCRHA's reasonable satisfaction, by delivering a written notice to the FCRHA (the “**Option Notice**”). The Option Notice shall include: (i) a certification from CHPPENN that it has satisfied the conditions precedent set forth in Section 3.3; and (ii) reasonably detailed supporting documentation of the satisfaction of such conditions (the “**Supporting Documentation**”). Upon the FCRHA's receipt of the Option Notice, the FCRHA shall have thirty (30) days to review the Supporting Documentation, and within such period the FCRHA shall deliver a written notice to CHPPENN either approving the Supporting Documentation, or disapproving all, or a portion, of the Supporting Documentation. In the event the FCRHA approves the Supporting Documentation, then the Parties shall continue to proceed to the Closing in accordance with this Agreement. In the event the FCRHA disapproves all, or a portion of, the Supporting Documentation, then the FCRHA's written notice (the “**Disapproval Notice**”) shall set forth, in reasonable detail, the FCRHA's objections to the Supporting Documentation, and any such additional information required by the FCRHA to approve the Supporting Documentation. Thereafter, within thirty (30) days following CHPPENN's receipt of the Disapproval Notice, CHPPENN shall submit such additional information, or other documentation, requested by the FCRHA in the Disapproval Notice. The process for the FCRHA's review and approval of the Supporting Documentation shall continue until the FCRHA has approved the Supporting Documentation, and the FCRHA shall have no obligation to execute the Ground Lease until CHPPENN has obtained such approval from the FCRHA; provided, however, in no event shall the FCRHA unreasonably withhold, delay, or condition the approval of the Supporting Documentation.

3.5 Failure to Exercise. If CHPPENN fails to deliver the Option Notice, or fails to deliver the Supporting Documentation and any additional information required by the FCRHA to approve the Supporting Documentation, by the Expiration Date, then (a) the FCRHA shall have

no obligation to refund the Consideration to CHPPENN; (b) CHPPENN shall promptly deliver to the FCRHA such documentation (fully executed and acknowledged) reasonably requested by the FCRHA to evidence termination of this Agreement and the Option Memorandum, but the failure to deliver such documentation shall not affect the termination of this Agreement and the Option Memorandum; (c) this Agreement shall immediately terminate without further action of the Parties; and (d) the Parties shall have no further obligations to each other except as otherwise specifically provided in this Agreement. This Section 3.5 is not intended to and does not in any way limit or affect any of the rights or remedies available to any Party to the extent expressly set forth in Section 9 below in the event the other Party defaults in the due and timely performance of any of its obligations, or is in breach of any of its representations and warranties, under this Agreement.

Section 4. **TERMS OF LEASE.**

4.1 Form of Lease. At the Closing, the FCRHA and CHPPENN shall enter into the Ground Lease, which will be substantially in the form of Schedule 1 attached hereto and made a part hereof except to the extent that any terms and conditions are no longer applicable or are otherwise invalid or unenforceable under Virginia laws as of the Closing Date (as defined in Section 7.1 below) or as otherwise mutually agreed to by the FCRHA and CHPPENN. Promptly after delivery of the Option Notice, to the extent necessary, the Parties shall meet in good faith to determine if any modifications are necessary to the proposed Ground Lease to reflect either any new, or otherwise unanticipated, circumstances regarding the Ground Lease Premises, financing of the Project or any changes in Virginia law that make any term or provision of the proposed Ground Lease invalid or unenforceable.

Section 5. **REPRESENTATIONS AND WARRANTIES OF THE FCRHA.**

5.1 In General. With the exception of those representations and warranties stated in Section 5.2, CHPPENN has not relied and will not rely upon any representations or warranties, express or implied, affirmative or negative, concerning the Ground Lease Premises made by the FCRHA, on the FCRHA's behalf, by any of the FCRHA's agents or employees, or otherwise.

5.2 Representations and Warranties of the FCRHA. The FCRHA represents and warrants that the following facts and circumstances are true and correct as of the Effective Date. In the event that any of the following representations and warranties are not true and correct as of the date CHPPENN delivers the Option Notice to the FCRHA, the FCRHA shall use reasonable efforts to cause such representations and warranties to be true and correct as of the Closing Date.

(a) Authority, Authorizations and Consents. The FCRHA is a political subdivision of the Commonwealth of Virginia. The FCRHA has all necessary power and authority to enter into this Agreement and to perform its obligations hereunder. The execution, delivery and performance of this Agreement has been duly and validly authorized by all necessary action and proceedings, and no further action or authorization is necessary on the part of the FCRHA in order to consummate the transactions contemplated herein. This Agreement is a legal, valid and binding obligation of the FCRHA, enforceable in accordance with its terms. Subject to the receipt of the HUD Approval as provided in Section 6.4 below, the FCRHA has obtained all authorizations, consents or approvals of any governmental entity or other person or entity required to be obtained

or given in connection with the execution and delivery of this Agreement by the FCRHA or the performance of any of the FCRHA's obligations hereunder.

(b) No Violation. The execution and delivery of this Agreement by the FCRHA, and the performance of its obligations hereunder, do not (i) violate, or conflict with any of the FCRHA's obligations under, any contract to which it is a party or by which it is bound, or (ii) violate (and none of such obligations shall be void or voidable under) any law, regulation, order, arbitration award, judgment or decree to which it is a party or to which it is subject.

(c) Options; Leases. No person or entity other than CHPENN holds any option or other right to lease or purchase all or any part of any of the Ground Lease Premises or any interest in the Ground Lease Premises.

5.3 Representations and Warranties of CHPENN. CHPENN represents and warrants that the following facts and circumstances are true and correct as of the Effective Date. In the event that any of the following representations and warranties are not true and correct as of the date CHPENN delivers the Option Notice to the FCRHA, CHPENN shall use reasonable efforts to cause such representations and warranties to be true and correct as of the Closing Date.

(a) Authority, Authorizations and Consents. CHPENN is a Virginia limited liability company. CHPENN has all necessary power and authority to enter into this Agreement and to perform its obligations hereunder. The execution, delivery and performance of this Agreement by CHPENN have been duly and validly authorized by all necessary action and proceedings, and no further action or authorization is necessary on the part of CHPENN in order to consummate the transactions contemplated herein. This Agreement is a legal, valid and binding obligation of CHPENN, enforceable in accordance with its terms. No authorization, consent or approval of, or notice to, any governmental entity or other person or entity is required to be obtained or given in connection with the execution and delivery of this Agreement by CHPENN or the performance of any of CHPENN's obligations hereunder. In the event that CHPENN assigns this Agreement (in accordance with its terms) to another entity acting as the optionee hereunder, such entity shall make the same (but corrected, as necessary) representations set forth in this Section 5.3(a) as of the Closing Date.

(b) No Violation. The execution and delivery of this Agreement by CHPENN, and the performance of its obligations hereunder, do not (i) violate, or conflict with any of CHPENN's obligations under, any contract to which it is a party or by which it is bound, or (ii) violate (and none of such obligations shall be void or voidable under) any law, regulation, order, arbitration award, judgment or decree to which it is a party or to which it is subject.

(c) Litigation and Claims. There is no suit, action, arbitration, or legal, administrative, or other proceeding, or governmental investigation pending or, to CHPENN's knowledge, threatened against or affecting any of the transactions contemplated by this Agreement.

5.4 Inaccuracies. In the event that either Party becomes aware of facts or circumstances after the Effective Date that might result in any of that Party's representations or warranties set

forth in Section 5.2 or Section 5.3 not being true as of the Closing, such Party shall give prompt written notice to the other Party of such facts or circumstances.

Section 6. GROUND LEASE PREMISES CONDITION; RIGHT OF ENTRY; EQUITY PARTNER; HUD; INTER-PARTY AGREEMENTS.

6.1 Property and Ground Lease Premises Condition. CHPPENN acknowledges that except to the extent of any express representations and warranties set forth in Section 5.2, the FCRHA has made no representations or warranties, express or implied, affirmative or negative, regarding the Property or the Ground Lease Premises or matters affecting the Property or the Ground Lease Premises, whether made by the FCRHA, or on the FCRHA's behalf, or by the FCRHA's agents or employees, or otherwise, and that except as otherwise provided in this Agreement, the leasehold interest in the Ground Lease Premises shall be conveyed subject to, and in accordance with, the terms and conditions of the Ground Lease. For the avoidance of doubt, CHPPENN shall accept possession of the Premises on the Commencement Date "AS IS, WHERE IS, WITH ALL FAULTS", subject to the Title Matters (as defined in the Ground Lease).

6.2 Right of Entry. During the Term, CHPPENN shall have reasonable rights of access to the Ground Lease Premises to the extent set forth in this Section 6.2 for the purposes of performing design and engineering analysis including environmental tests and studies and soils borings and tests, provided that neither CHPPENN nor its contractors shall unreasonably disrupt the normal operation of the Ground Lease Premises. CHPPENN's access hereunder shall be in compliance with all applicable statutes, laws, rules, regulations, ordinances, and orders of any governmental or quasi-governmental authority having jurisdiction over the Ground Lease Premises and CHPPENN's and/or its contractors activities thereon. All such entry shall be coordinated in advance with appropriate representatives of the FCRHA; for purposes of this Section 6.2, the appropriate representatives shall be Kevin (Casey) Sheehan at 703-324-5146 and kevin.sheehan@fairfaxcounty.gov and Rex Peters at 703-324-5143 and john.peters2@fairfaxcounty.gov. Prior to CHPPENN entering the Ground Lease Premises, CHPPENN (or its contractor) shall obtain and maintain, at CHPPENN's (or its contractor's, as the case may be) sole cost and expense, the following insurance coverage, and shall cause each of its agents and contractors to obtain and maintain, and, upon request of the FCRHA, shall deliver to the FCRHA evidence of (i) general liability insurance, from an insurer reasonably acceptable to the FCRHA, in the amount of One Million and No/100 Dollars (\$1,000,000.00) combined single limit for personal injury and property damage per occurrence, (ii) workmen's compensation insurance at statutory limits, (iii) employer's liability insurance in an amount not less than \$1,000,000, and (iii) professional liability insurance of not less than \$1,000,000 for any access to conduct environmental tests and studies and/or soil borings and tests. CHPPENN shall provide the FCRHA with original certificates of insurance for the coverage required above not less than five (5) business days prior to any access, naming the FCRHA and such other parties designated by the FCRHA as additional insureds and otherwise in form reasonably satisfactory to the FCRHA. The FCRHA shall have the right, in its discretion, to accompany CHPPENN and/or its contractors. All damage to the Ground Lease Premises resulting from any access by or at the direction of CHPPENN or its contractors shall be repaired immediately by CHPPENN, at its sole cost and expense, so that the Ground Lease Premises shall be restored to the same condition in which it existed immediately prior to such access. CHPPENN shall indemnify, defend and save the FCRHA and its respective agents, directors, officers and employees (collectively, the

“**Indemnitees**”) harmless from and against any and all losses, liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses (including, without limitation, engineers’, architects’ and attorneys’ fees and disbursements), which may be suffered by, imposed upon or incurred by or asserted against the FCRHA or any of the Indemnitees as a result of any access pursuant to this Section 6.2. The provisions of this Section 6.2 shall survive Closing or any termination of this Agreement.

6.3 CHPPENN’s Equity Partner. CHPPENN shall promptly commence and use commercially reasonable efforts to secure an equity partner for its development of the Ground Lease Premises on or before the date that is 270 days after the Effective Date (the “**Equity Partner Outside Date**”). Promptly after the request of the FCRHA, CHPPENN shall provide the FCRHA with periodic updates with regard to its efforts in securing an equity partner. If CHPPENN shall have promptly commenced and used commercially reasonable efforts to secure an equity partner for the Project, then if CHPPENN shall not have secured an equity partner for its development of the Ground Lease Premises on or before the Equity Partner Outside Date, CHPPENN may, by notice delivered to the FCRHA on or prior to the Equity Partner Outside Date, terminate this Agreement, and except as otherwise expressly set forth in this Agreement, neither the FCRHA nor CHPPENN shall have any further liability hereunder. If CHPPENN does not timely and properly deliver to the FCRHA notice of CHPPENN’s election to terminate this Agreement under this Section 6.3 prior to the Equity Partner Outside Date, then CHPPENN shall be deemed to have waived its right to terminate this Agreement under this Section 6.3 and this Section 6.3 shall thereafter be null, void and of no further force and effect.

6.4 HUD Approval. Notwithstanding anything herein to the contrary, if the FCRHA has not received approval from the U.S. Department of Housing and Urban Development to use proceeds from the sale of the Sale Property for site work costs related to the Affordable Housing Units (the “**HUD Approval**”) by June 30, 2017 (“**HUD Deadline**”), then the FCRHA shall have the ability, upon delivery of written notice to CHPPENN by no later than August 1, 2017, to (A) terminate this Agreement, effective as of the date of such notice, or (B) extend the HUD Deadline to a date that shall be no later than September 1, 2017, or with CHPPENN’s consent, not to be unreasonably withheld, conditioned or delayed, to a date that shall be no later than the Closing Date. If the HUD Approval has not been received by any such extended date, this Agreement shall automatically terminate, and thereupon the parties hereto shall have no further rights or obligations hereunder except for those rights and obligations which specifically survive termination hereunder. The FCRHA will keep CHPPENN reasonably apprised of the FCRHA’s discussions with HUD regarding efforts to obtain the HUD Approval, will discuss those efforts with CHPPENN, and will share related documentation of these discussions with CHPPENN.

6.5 Development Agreements. On or before the Development Agreement Approval Deadline (as defined below), the FCRHA and CHPPENN shall execute and (if applicable) record among the Fairfax County land records a development agreement to implement development of the Project (the “**Development Agreement**”). The Development Agreement will include, among other items, those matters set forth on Exhibit B, attached hereto and incorporated herein by reference. On or before April 1, 2017, unless otherwise agreed by the FCRHA and CHPPENN, the FCRHA shall provide an initial draft of the Development Agreement to CHPPENN for review and comment. The FCRHA and CHPPENN shall thereafter each act in good faith and use reasonable efforts to agree upon the final form of the Development Agreement no later than April

25, 2017, unless otherwise agreed by the FCRHA and CHPPENN, to be processed and approved under the PPEA on or before June 15, 2017, unless otherwise agreed by the FCRHA and CHPPENN (the “**Development Agreement Approval Deadline**”). On or before the Development Agreement Approval Deadline, the FCRHA and CHPPENN shall execute the PPEA-approved Development Agreement. In the event that the FCRHA and CHPPENN are unable to reach agreement on the form and substance of the Development Agreement on or before the Development Agreement Approval Deadline, or the Development Agreement has not been finally approved and fully executed on or before the Development Agreement Approval Deadline, then this Agreement shall automatically terminate, and thereupon the parties hereto shall have no further rights or obligations hereunder except for those rights and obligations which specifically survive termination hereunder.

6.6 At Closing hereunder, the FCRHA, CHPPENN, and the Purchaser shall execute and record among the Fairfax County land records an agreement to allocate the responsibilities and costs for Proffers for the Project (the “**Proffer Allocation Agreement**”). The FCRHA and CHPPENN shall each act in good faith and use reasonable efforts to agree, and shall use reasonable efforts to cause the Purchaser to agree, upon the final form of the Proffer Allocation Agreement.

6.7 At Closing hereunder, the FCRHA, CHPPENN, and the Purchaser shall execute and record among the Fairfax County land records an agreement to reflect such easements and related provisions as may be necessary for the development, operation, and maintenance (including the performance of and payment for routine and capital maintenance and replacement work) of the Project (the “**REA**”; together with the Proffer Allocation Agreement, the “**Inter-Party Agreements**”). The FCRHA and CHPPENN shall each act in good faith and use reasonable efforts to agree, and shall use reasonable efforts to cause the Purchaser to agree, upon the final form of the REA; provided, however, that in no event shall the FCRHA be responsible for any costs relating to the For-Sale Townhomes, the Sale Property, the Affordable Units, the Ground Lease Premises, the retaining walls, or stormwater.

6.8 CHPPENN acknowledges that the Purchaser of the Sale Property has not yet been identified, nor has the FCRHA yet entered into a Purchase Agreement for the Sale Property. CHPPENN further acknowledges that the FCRHA will require, as part of the Purchase Agreement or as part of a separate agreement with Purchaser that is approved and executed simultaneously with the Purchase Agreement, the Purchaser to construct the portion of the retaining wall to be located on the Sale Property and to provide adequate assurances to the FCRHA that such wall will be constructed. The terms of the Purchase Agreement (and separate development agreement, if applicable) remain to be negotiated between the FCRHA and the Purchaser and shall be acceptable to the FCRHA in its sole discretion. Notwithstanding the foregoing, CHPPENN acknowledges that the condition to closing at Section 8.2(i) of this Agreement is and shall be effective from the Effective Date until such condition is satisfied or expressly waived by the FCRHA in accordance with the terms of this Agreement.

Section 7. **CLOSING.**

7.1 Time. If, and on the express condition that, CHPPENN delivered the Option Notice, the Supporting Documentation and any additional information required by the FCRHA to approve the Supporting Documentation not later than 30 days prior to the Expiration Date, then on a date prior to the Expiration Date and no later than ninety (90) days after the satisfaction or waiver (if applicable) of the conditions precedent set forth in Section 8.1 and Section 8.2, the Parties shall each execute and exchange original counterparts and deposit into escrow the documents described in Section 7.3 and Section 7.4 below. The Parties shall close the transaction contemplated by this Agreement (the “**Closing**”) on a date (the “**Closing Date**”) that shall be selected by CHPPENN giving at least fifteen (15) business days prior written notice to the FCRHA, unless otherwise agreed in writing by the Parties.

7.2 Escrow. The Parties shall conduct the Closing through [_____] ⁴ (the “**Escrow Agent**”) or such other party mutually agreed by the Parties. The terms of this Agreement (including, but not limited to, the terms contained in this Section 7), together with such additional instructions as the Escrow Agent shall reasonably request and to which the Parties shall agree in writing, shall constitute the escrow instructions to the Escrow Agent. If there is any inconsistency between this Agreement and any additional escrow instructions given to the Escrow Agent, this Agreement shall control unless the intent to amend this Agreement is clearly and expressly stated in the additional escrow instructions.

7.3 The FCRHA’s Deposits into Escrow. The FCRHA shall deposit into escrow on or before Closing the following documents:

- (a) Two duly executed counterpart originals of the Ground Lease;
- (b) A duly executed and acknowledged counterpart original memorandum of lease in a reasonable form that has been agreed to by the FCRHA and CHPPENN in recordable form for the Ground Lease (the “**Memorandum of Lease**”);
- (c) A certificate of the FCRHA signed by a person duly authorized to do so on behalf the FCRHA affirming that all of the FCRHA’s representations and warranties set forth in Section 5.2 are true in all material respects as of the Closing Date; provided, however, to the extent the FCRHA is aware of facts or circumstances that result in the FCRHA’s representations or warranties set forth in Section 5.2 not being true as of the Closing, the FCRHA shall disclose such facts or circumstances in such certificate (the “**FCRHA Certificate**”);
- (d) Such additional documents, including written escrow instructions consistent with this Agreement, as are both (i) reasonably necessary for the consummation of the transactions contemplated by this Agreement and (ii) reasonably consistent with the forms of such documents typically executed by the FCRHA.

7.4 CHPPENN’s Deposits into Escrow. CHPPENN shall deposit into escrow on or before Closing:

- (a) Two duly executed counterpart originals of the Ground Lease;

⁴ To be determined.

(b) A duly executed and acknowledged counterpart original of the Memorandum of Lease;

(c) Two duly executed counterpart originals of the Guaranty (as defined in the Ground Lease) for the Ground Lease;

(d) A certificate of CHPPENN signed by a person duly authorized to do so on behalf of CHPPENN, affirming that all of the representations and warranties of CHPPENN set forth in Section 5.3 are true in all material respects as of the Closing Date; provided, however, to the extent CHPPENN is aware of facts or circumstances that result in CHPPENN's representations or warranties set forth in Section 5.3 not being true in all material respects as of the Closing, CHPPENN shall disclose such facts or circumstances in such certificate (the "**CHPPENN Certificate**");

(e) Such evidence as the Escrow Agent reasonably requires as to the authority of the person or persons executing documents on behalf of CHPPENN;

(f) The Base Rent payment in the amount of Ten (\$10) Dollars in immediately available funds;

(g) Such additional documents, including written escrow instructions consistent with this Agreement, as are reasonably necessary for the lease of the Ground Lease Premises in accordance with the terms of this Agreement.

7.5 Closing. When the Escrow Agent has received all documents identified in Section 7.3 and Section 7.4, and has received written notification from CHPPENN and the FCRHA that all conditions to Closing have been satisfied or waived; then, and only then, the Escrow Agent shall take the following actions in the following chronological order:

(a) Record in the Official Records the Memorandum of Lease (marked for return to CHPPENN) against the Land;

(b) Deliver to CHPPENN: (i) a conformed copy (showing all recording information thereon) of the Memorandum of Lease, (ii) a fully executed original of the Ground Lease; and (iii) the FCRHA Certificate;

(c) Deliver to the FCRHA: (i) a conformed copy (showing all recording information thereon) of the Memorandum of Lease, (ii) a fully executed original of the Ground Lease; (iii) two duly executed counterpart originals of the Guaranty for the Ground Lease; and (iv) the CHPPENN Certificate.

7.6 Closing Costs. As additional consideration for this Agreement and the lease of the Ground Lease Premises pursuant to the Ground Lease, CHPPENN shall pay all escrow and recording fees and other closing costs charged by the Escrow Agent.

Section 8. **CONDITIONS PRECEDENT; COVENANTS.**

8.1 CHPPENN's Conditions. CHPPENN's obligations under this Agreement to Close escrow are subject to the fulfillment of the following conditions at or prior to the Closing Date, each of which shall be deemed waived (other than Section 8.1(d) and Section 8.1(e), which may not be waived by CHPPENN) unless CHPPENN exercises its rights pursuant to Section 8.4 below to terminate the Agreement:

(a) Representations and Warranties. The FCRHA's representations and warranties contained in Section 5.2, as restated as of the Closing in the FCRHA Certificate, shall be true in all material respects at and as of the Closing.

(b) No Exceptions. Any material qualification or any exceptions of any kind to any of the representations or warranties set forth in the FCRHA Certificate shall be acceptable to CHPPENN, in its reasonable discretion.

(c) Performance. The FCRHA shall have performed and complied in all material respects with all covenants, agreements, terms and conditions required by this Agreement to be performed or complied with by the FCRHA prior to or at the Closing.

(d) Permits and Construction Approvals. CHPPENN shall have applied for all governmental approvals and permits, including building permits for the construction of the Affordable Housing Units on the Ground Lease Premises.

(e) Tax Credits; Financing. CHPPENN shall be simultaneously closing on (i) an award from the Virginia Housing and Development Authority ("VHDA") of [nine percent (9%) / four percent (4%)]⁵ low-income housing tax credits (the "Tax Credits") necessary to enable CHPPENN to construct the Affordable Housing Units on the Ground Lease Premises (and all challenge periods related to such award have expired), and (ii) the equity investment and/or loan financing in amounts substantially similar to the amounts set forth in the application to VHDA for the Tax Credits.

(f) Sale Property. The Sale Property shall be simultaneously sold by the FCRHA as contemplated by the Purchase Agreement.

8.2 The FCRHA's Conditions. The FCRHA's obligations under this Agreement to Close escrow are subject to the fulfillment of the following conditions at or prior to the Closing Date, each of which shall be deemed waived unless the FCRHA exercises its rights pursuant to Section 8.4 below to terminate the Agreement:

(a) Representations and Warranties. CHPPENN's representations and warranties contained in Section 5.3, as restated as of the Closing in the CHPPENN Certificate, shall be true in all material respects at and as of the Closing.

⁵ As applicable, depending on which lease.

(b) No Exceptions. Any material qualification or any exceptions of any kind to any of the representations or warranties set forth in the CHPPENN Certificate shall be acceptable to the FCRHA, in its reasonable discretion.

(c) Performance. CHPPENN shall have performed and complied in all material respects with all covenants, agreements, terms and conditions required by this Agreement to be performed or complied with by CHPPENN prior to or at the Closing.

(d) No Litigation. There shall exist no pending or threatened actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings by or against CHPPENN that would materially and adversely affect the ability of CHPPENN to perform its obligations under this Agreement.

(e) Tax Credits; Financing. CHPPENN shall be simultaneously closing on (i) the VHDA Tax Credits (and any and all challenge periods related to such award have expired), and (ii) the equity investment and financing in amounts substantially similar to the amounts set forth in the application to VHDA for the Tax Credits; provided, however, that notwithstanding the foregoing to the contrary, the FCRHA shall have the option, in its sole and absolute discretion, to waive the obligation of CHPPENN to the simultaneous closings referenced in clause (i) and clause (ii) above.

(f) Subdivision and Site Plan. CHPPENN shall have prepared and obtained all approvals necessary for, and shall have actually effectuated, the subdivision of the Property as generally contemplated for the Project. CHPPENN shall have prepared and submitted the site plan for the Affordable Housing Units (the “**Site Plan**”) to the Fairfax County Department of Public Works and Environmental Services (“**DPWES**”) and shall have received an initial response with comments from the DPWES Land Development Services branch.

(g) Plans and Specifications. The FCRHA shall have approved CHPPENN’s proposed Plans and Specifications (as defined in the Ground Lease).

(h) Delivery of Option Notice; Approval of Supporting Documentation. CHPPENN shall have delivered the Option Notice, the Supporting Documentation and any additional information required by the FCRHA to approve the Supporting Documentation in accordance with Section 3, and the FCRHA has approved the Supporting Documentation in accordance with Section 3.

(i) Sale Property. The Sale Property shall be simultaneously sold by the FCRHA as contemplated by the Purchase Agreement; provided, however, that notwithstanding the foregoing to the contrary, the FCRHA shall have the option, in its sole and absolute discretion, to waive the simultaneous sale of the Sale Property.

(j) Other Ground Leases. CHPPENN shall be simultaneously entering into the Other Ground Leases; provided, however, that notwithstanding the foregoing to the contrary, the FCRHA shall have the option, in its sole and absolute discretion, to waive the simultaneous execution of the Other Ground Leases.

(k) Easements; Proffers. The FCRHA, CHPENN, and the Purchaser shall be simultaneously entering into the Inter-Party Agreements.

(l) Development Agreement Budget. The FCRHA shall have approved CHPENN's proposed budget for the work to be performed by CHPENN under the Development Agreement.

8.3 Additional CHPENN Covenants. In addition to the obligations of CHPENN under Section 8.1 and Section 8.2 above:

(a) CHPENN shall timely apply to VHDA for the Tax Credits in each applicable cycle during the Term for the Ground Lease Premises, and CHPENN shall diligently and in good faith prosecute all steps and actions needed for the award of the Tax Credits. Promptly following the award of the Tax Credits, CHPENN shall (i) apply for and diligently prosecute in good faith all steps and actions needed to obtain loan or equity financing in amounts substantially similar to the amounts set forth in the application for the Tax Credits, and (ii) pursue the commitment of a tax credit investor for the purchase of the Tax Credits for the Project.

(b) CHPENN shall use its best efforts to prosecute the generation, submission and approval of (i) the subdivision of the Property to effectuate the Project, (ii) the Site Plan, and (iii) the Plans and Specifications. Prior to submitting each of the subdivision and Site Plan for regulatory approval (or, in the case of subdivision, should subdivision not require a regulatory approval, before recordation or other finalization of the subdivision), CHPENN shall obtain the consent of the FCRHA to the proposed submission (or, as applicable, other documentation) and shall submit such materials to the FCRHA for review and approval, not to be unreasonably withheld, conditioned, or delayed. The FCRHA shall respond within ten (10) business days and otherwise reasonably cooperate with CHPENN in the pursuit of the subdivision and Site Plan.

In the event that CHPENN fails to satisfy the covenants set forth in this Section, the FCRHA may avail itself of the rights and remedies set forth in Section 8.4 and Section 9 below.

8.4 Satisfaction of Requirements; Failure of Conditions. CHPENN shall promptly commence and diligently pursue until completion all work and actions needed to satisfy the obligations and requirements set forth in Section 8. So long as a Party is not in default hereunder, if any condition to such Party's obligation to proceed with the Closing hereunder has not been satisfied as of the Closing Date or any other applicable date specified in this Agreement, such Party may, in its sole discretion, either (a) terminate this Agreement by delivering written notice to the other Party on or before the Closing Date, (b) extend the time available for the satisfaction of such condition (provided however, that such extension may not be beyond the Expiration Date), or (c) elect to close, notwithstanding the non-satisfaction of such condition, in which event such Party shall be deemed to have waived any such condition. If such party elects to proceed pursuant to clause (b) above, and such condition remains unsatisfied after the end of such extension period, then, at such time, such party may elect to proceed pursuant to either clause (a) or (c) of the preceding sentence. In the event the failure of a condition precedent for the benefit of either Party is not satisfied due to a breach of this Agreement by the other Party (for example, a failure or refusal to perform a Party's obligations under this Agreement), the benefitted Party's rights and remedies shall be as set forth in Section 9.

Section 9. **DEFAULT; REMEDIES.**

9.1 A FCRHA Default. In the case of any default or breach by the FCRHA hereunder, CHPPENN shall give the FCRHA written notice of such default or breach and shall provide the FCRHA with thirty (30) days to cure the default or breach. In the event the FCRHA fails to cure the default or breach within such thirty (30) day period, CHPPENN shall be entitled to (a) if and to the extent that such default or breach is reasonably susceptible to cure by the FCRHA, seek specific performance to enjoin the FCRHA to cure such default or breach and consummate the transaction contemplated by this Agreement; or (b) terminate the Option. Upon any termination by CHPPENN under this Section 9.1, CHPPENN shall be entitled to receive a refund of the Consideration previously paid. Additionally, CHPPENN may terminate the Option if any condition to Closing contained in Section 8.1 has not been satisfied or waived by CHPPENN in writing by the Closing Date. Notwithstanding anything to the contrary contained in this Agreement, CHPPENN's sole remedy for any default or breach by the FCRHA hereunder shall be specific performance (as described in Section 9.1(a)), or terminating the Option (as described in Section 9.1(b)); and in no event shall CHPPENN be entitled to recover any monetary damages (other than a refund of the Consideration) or other damages from the FCRHA in the event the FCRHA defaults or breaches this Agreement.

9.2 CHPPENN Default. In the case of any default or breach by CHPPENN hereunder, the FCRHA shall give CHPPENN written notice of such default or breach and shall provide CHPPENN with thirty (30) days to cure the default or breach. In the event CHPPENN fails to cure the default or breach within such thirty (30) day period, the FCRHA may terminate the Option. Additionally, the FCRHA may terminate the Option in the event any condition to Closing contained in Section 8.2 or Section 8.3 has not been satisfied or waived by the FCRHA in writing by the Closing Date. The FCRHA's sole remedy for any default or breach by CHPPENN hereunder shall be terminating the Option; in no event shall the FCRHA be entitled to any damages from CHPPENN in the event CHPPENN defaults or breaches this Agreement.

Section 10. **RISK OF LOSS; CONDEMNATION OR CASUALTY**

10.1 Risk of Loss. Risk of loss shall remain with the FCRHA until Closing. The FCRHA shall notify CHPPENN of any (i) condemnation or taking by eminent domain of any portions of the Ground Lease Premises or (ii) casualty event affecting the Ground Lease Premises. CHPPENN and the FCRHA agree that the FCRHA has no obligation to restore the Ground Lease Premises or the Existing County Land in the event of a condemnation or casualty event.

10.2 Obligation to Close. Notwithstanding any condemnation or casualty event, CHPPENN shall remain obligated to close under this Agreement so long as such condemnation or casualty event does not materially and adversely affect the Ground Lease Premises. For purposes of this Section, a condemnation or casualty event will "materially and adversely affect the Ground Lease Premises" if, after completion of such condemnation or the occurrence of such casualty event, as applicable, CHPPENN would no longer be able to develop the Ground Lease Premises in substantial accordance with the Ground Lease, subject to any minor adjustments caused by such condemnation or casualty event, as applicable. In the event of a condemnation or casualty event that has a material and adverse effect on the Ground Lease Premises, (A) CHPPENN shall have the right to terminate this Agreement without liability on its part by so notifying the FCRHA within

fifteen (15) days of the FCRHA's notification to CHPPENN of said condemnation or casualty event, and except as otherwise expressly set forth in this Agreement, neither the FCRHA nor CHPPENN shall any further liability hereunder, and (B) if CHPPENN does not so terminate the Agreement, then CHPPENN shall remain obligated to close under this Agreement and neither such condemnation or casualty event nor the condition of the Ground Lease Premises thereafter shall be deemed to give rise to a default hereunder.

Section 11. MISCELLANEOUS PROVISIONS.

11.1 No Brokers, Finders, Etc. None of the Parties has engaged any agent, broker, finder or investment or commercial banker in connection with the negotiation, execution or performance of this Agreement, or the transactions contemplated hereby.

11.2 Expenses. Except as specifically set forth herein, whether or not the transaction contemplated by this Agreement is consummated, each of the Parties shall pay their own fees and expenses incident to the negotiation, preparation, execution, delivery and performance of this Agreement.

11.3 Complete Agreement; Waiver and Modification, Etc. This Agreement and the Option to Lease dated as of the date hereof between the FCRHA and CHPPEN for the 9% Ground Lease⁶ (the "**Option**") constitutes the entire agreement between the Parties hereto and thereto pertaining to the subject matter hereof and thereof and supersedes all prior and contemporaneous agreements and understandings of the Parties. There are no representations, warranties, covenants or conditions by or benefiting any Party except those expressly stated or provided for in this Agreement, any implied representations, warranties, covenants or conditions being hereby expressly disclaimed. No person or entity other than the Parties to this Agreement have any rights or remedies under or in connection with this Agreement, except rights or remedies validly assigned hereunder. No amendment, supplement or termination of or to this Agreement, and no waiver of any of the provisions hereof, shall require the consent of any person or entity other than the Parties hereto, nor shall any such amendment, supplement, termination or waiver be binding on a Party to this Agreement unless made in a writing signed by such Party. To the extent any provision of the Option conflicts with, or is inconsistent with, this Agreement, then this Agreement shall govern and control.

11.4 Notices. Whether expressly so stated or not, whenever it is provided in this Agreement that a notice, demand, request, consent, approval or other communication (each of which is herein referred to as "**Notice**") shall or may be given to or served upon either of the Parties by the other, and whenever either of the Parties shall desire to give or serve upon the other any Notice with respect hereto or the Ground Lease Premises, each such Notice shall be in writing and, any law or statute to the contrary notwithstanding, shall not be effective for any purpose unless given or served as follows: (a) by personal delivery (with receipt acknowledged), (b) delivered by reputable, national overnight delivery service (with its confirmatory receipt therefor), next

⁶ The other Contracts to Ground Lease will reference the Option to Lease for the senior housing leasehold and the 4% leasehold.

business day delivery specified, or (c) sent by registered or certified United States mail, postage prepaid, return receipt requested, in each case to the Parties as follows:

If to CHPPENN, to:

With a copy to:

Klein Hornig LLP
1275 K Street NW, Suite 1200
Washington, DC 20005
Attention: Erik Hoffman

If to the FCRHA, to:

Fairfax County Redevelopment and Housing Authority
3700 Pender Drive
Fairfax, Virginia 22030
Attention: Director, HCD

With copies to:

Office of the County Attorney
12000 Government Center Parkway, Suite 549
Fairfax, Virginia 22035-0064
Attention: County Attorney

Norton Rose Fulbright US LLP
799 9th Street NW, Suite 1000
Washington, DC 20001-4501
Attention: Julie A. Tassi

Either the FCRHA or CHPPENN may change the address(es) to which any such Notice is to be delivered to it by furnishing ten (10) days written notice of such change(s) to the other Party in accordance with the provisions of this Section 11.4. Every Notice shall be deemed to have been given or served upon delivery thereof, with failure to accept delivery to constitute delivery for such purpose.

11.5 Governing Law. This Agreement shall be interpreted in accordance with and governed by the laws of the Commonwealth of Virginia.

11.6 Headings; References; "Hereof," Etc. The Section headings in this Agreement are provided for convenience only, and shall not be considered in the interpretation hereof or thereof. References in this Agreement to Sections or Schedules refer, unless otherwise specified, to the designated Section of or Schedule to this Agreement, and terms such as "herein," "hereto" and "hereof" used in this Agreement refer to this Agreement as a whole.

11.7 Successors and Assigns. CHPPENN may not assign its rights under this Agreement to any party without the prior written consent of the FCRHA, which may be withheld in the FCRHA's sole and absolute discretion. A sale, assignment, or other transfer of the equity of CHPPENN or any direct or indirect parent of CHPPENN shall be deemed to be an assignment subject to the restrictions of this Section 11.7. Notwithstanding the foregoing to the contrary, CHPPENN shall be permitted to assign its rights under this Agreement to any person or entity which directly or indirectly controls, is controlled by or is under common control with CHPPENN, or to any person or entity resulting from a merger or consolidation with CHPPENN, or to any person or entity which acquires all the assets of CHPPENN's business as a going concern pursuant to a written agreement, reasonably acceptable to the FCRHA, provided that (i) such assignment or sublease is not a subterfuge to avoid the application of the provisions of this Section 11.7, (ii) the assignee assumes, in full, the obligations of CHPPENN under this Agreement, pursuant to a written agreement in form reasonably acceptable to the FCRHA, and (iii) CHPPENN provides the FCRHA with prior written notice of any such assignment.

11.8 Severability. If for any reason any provision of this Agreement shall be held invalid, illegal or unenforceable in whole or in part in any jurisdiction, then that provision shall be ineffective only to the extent of that invalidity, illegality or unenforceability and in that jurisdiction only, without in any manner affecting the validity, legality or enforceability of the unaffected portion and the remaining provisions in that jurisdiction or any provision of this Agreement in any other jurisdiction.

11.9 Cumulative Rights and Remedies. The rights and remedies of each Party under this Agreement are cumulative, except as otherwise expressly provided.

11.10 Survival of Representations and Warranties. Except as otherwise expressly provided in this Agreement, all representations, warranties, covenants and agreements of the Parties contained in this Agreement shall be considered material and shall be effective and survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and thereby notwithstanding any investigation of the matters covered thereby by or on behalf of any Party benefited by any such representation, warranty, covenant or agreement or any knowledge (actual or constructive) on the part of any Party benefited by any such representation, warranty, covenant or agreement as to the truth or accuracy (or falseness or inaccuracy) thereof.

11.11 Further Assurances. From time to time and at any time after the execution and delivery hereof, each of the Parties, at their own expense, shall execute, acknowledge and deliver any further instruments, documents and other assurances reasonably requested by another Party,

and shall take any other action consistent with the terms of this Agreement that may reasonably be requested by another Party to evidence or carry out the intent of or to implement this Agreement.

11.12 Counterparts; Separate Signature Pages. This Agreement may be executed in any number of counterparts, or using separate signature pages. Each such executed counterpart and each counterpart to which such signature pages are attached shall be deemed to be an original instrument, but all such counterparts together shall constitute one and the same instrument.

11.13 Time. **WHETHER EXPRESSLY SO STATED OR NOT IN CONNECTION WITH ANY OBLIGATION, TIME IS OF THE ESSENCE IN THE PERFORMANCE OF EACH PARTY'S RESPECTIVE OBLIGATIONS UNDER THIS AGREEMENT, AND NO NOTICE OF A PARTY'S INTENT TO REQUIRE STRICT COMPLIANCE WITH ANY OF THE DEADLINES SET FORTH IN THIS AGREEMENT IS REQUIRED.** In the event that any time period set forth in this Agreement would otherwise expire on a Saturday, Sunday or holiday, such time period shall be automatically extended to the next business day.

11.14 Estoppel Certificates. Each Party shall, from time to time upon fifteen (15) days' prior written request by the other Party, execute, acknowledge and deliver to the requesting Party a certificate signed by an authorized representative of such Party stating whether to the actual knowledge of such Party (without investigation) (a) this Agreement is or is not in full force and effect, (b) this Agreement is or is not unmodified (and, if modified, the details of the modification(s)), and (c) the requesting Party is in default in performance of any covenant, agreement or condition contained in this Agreement, and, if so, specifying each such default of which the non-requesting Party may have actual knowledge.

11.15 Incorporation of Recitals. The Recitals set forth above are hereby incorporated into this Agreement.

[Signatures on the following page]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date first written above.

FCRHA:

FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY, a political subdivision of the Commonwealth of Virginia,

By: _____
Name: _____
Title: _____

CHPPENN:

CHPPENN I, LLC, a Virginia limited liability company

By: Pennrose Properties, LLC,
a Pennsylvania limited liability company
Its Co-Manager

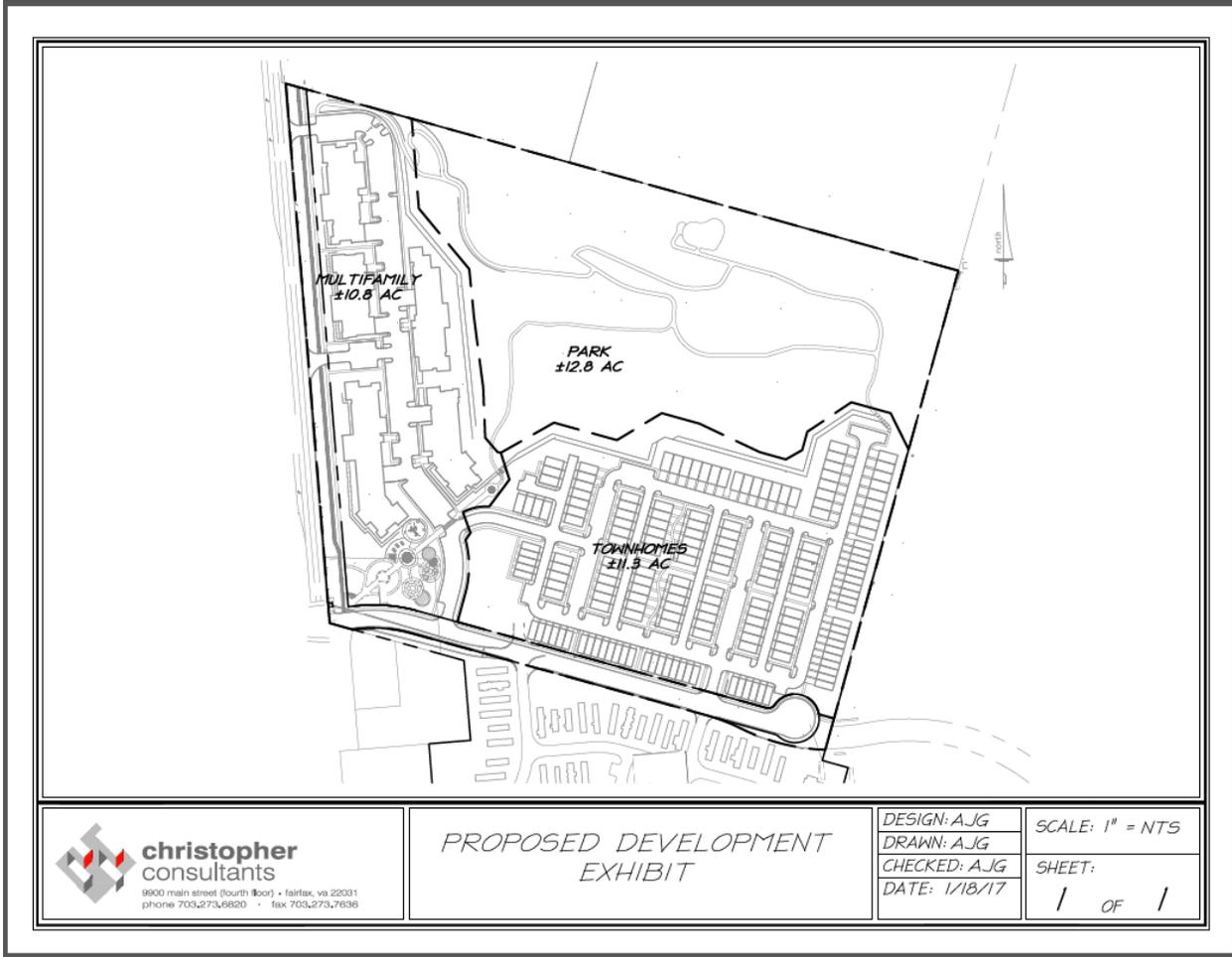
By: _____
Name: _____
Title: _____

By: Community Housing Partners Corporation,
a Virginia Nonstock Corporation
Its Co-Manager

By: _____
Name: _____
Title: _____

SCHEDULE A

DESCRIPTION OF PROPERTY – BELOW



SCHEDULE B

**DESCRIPTION OF SALE PROPERTY – THE SALE PROPERTY IS THAT PORTION
OF THE PROPERTY DEPICTED BELOW AS THE “TOWNHOMES”**

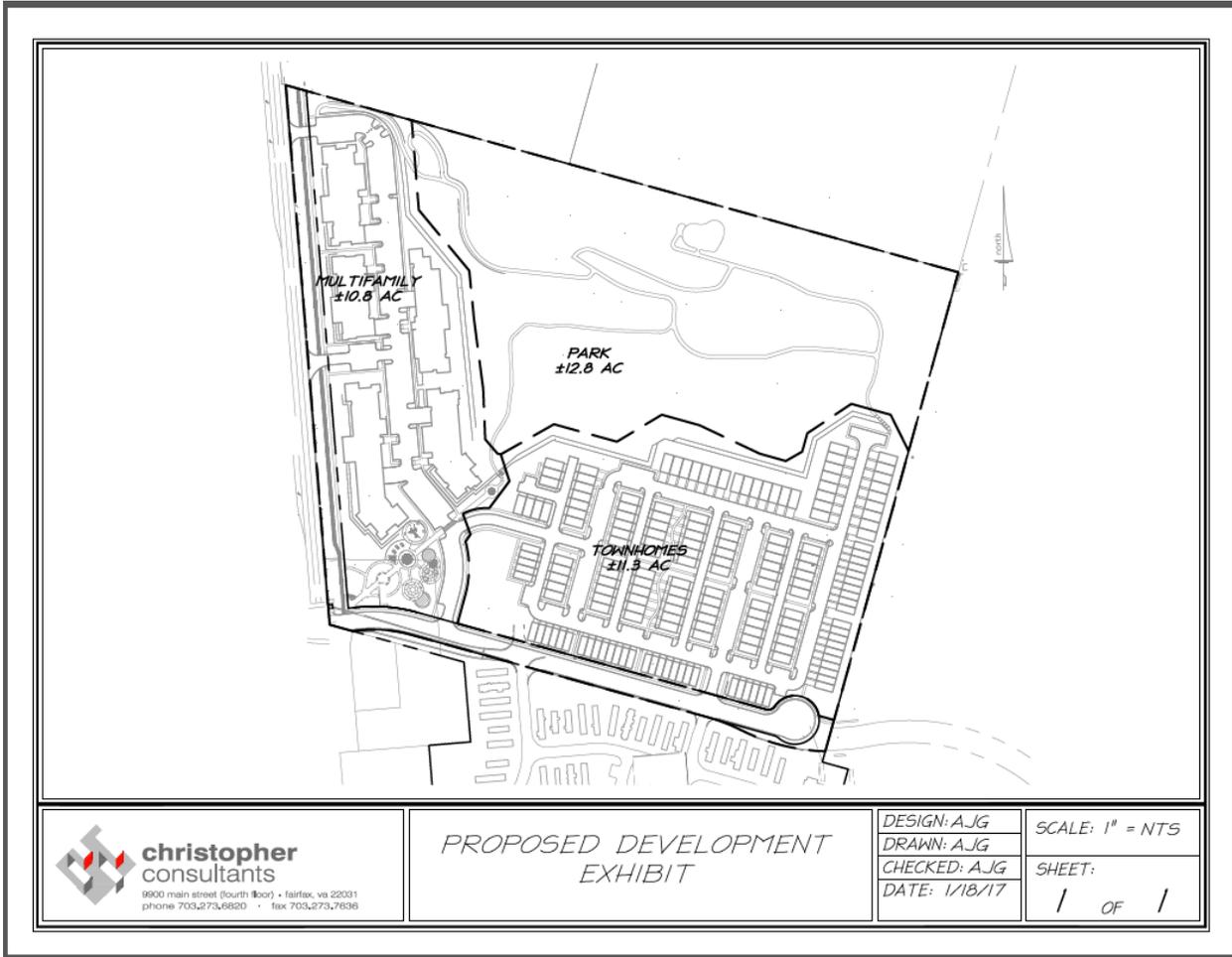


EXHIBIT A
GROUND LEASE
(Attached)

EXHIBIT B

DEVELOPMENT AGREEMENT TERMS (CHPPENN)

- A. **Anticipated Scope.** CHPPENN will construct certain infrastructure work necessary to construct fully functioning Affordable Housing Units in accordance with the Proffers and Site Plan, including:
- i. The retaining wall for the Project, except that portion located on the Sale Property (“**CHPPENN Retaining Wall**”);
 - ii. Curbs, gutters, sanitary sewer mains, manholes, service laterals to behind the curb and gutter, storm drains, and pavement and internal road network (except for roads located on the Sale Property);
 - iii. Storm water management facilities, including outfall;
 - iv. Additional utility rough-ins and connections work necessary for the preparation of the remainder of the Affordable Housing Units;
 - v. Improvements to Dart Drive, in accordance with VDOT requirements;
 - vi. Frontage improvements along Route 1, in accordance with VDOT requirements;
 - vii. A public plaza area at the intersection of Route 1 and Dart Drive;
 - viii. The following improvements to the Park: the parking lot to be located in the northwest corner of the Existing FCRHA Land that will benefit the Park, a trail head to the Park from said parking lot, certain access points to the Park per the Site Plan, a to be designed trailhead feature between the multifamily and townhome parcels, and possibly an accessible pathway between the trailhead feature and the trailhead adjacent to the Park parking lot, and
 - ix. Hauling off necessary soils (including all unsuitable materials), grading and other site work (collectively, the “**Scope**”).

The ultimate Scope will be finalized by the parties to the Development Agreement.

- B. **Approval of Drawings, Plans, and Specifications.** In connection with the initial construction and development of the Scope, CHPPENN shall submit reasonably detailed construction drawings, plans and specifications to the FCRHA for the FCRHA’s review and approval, subject to an agreed-upon milestone schedule. The FCRHA’s approval of the construction drawings, plans and specifications shall not be unreasonably withheld, conditioned or delayed. CHPPENN will design the CHPPENN Retaining Wall taking into account the contemplated improvements referenced above, including, without limitation, the improvements to be constructed to the Park.
- C. **Approval of Contractors.** Final selection by CHPPENN of a general contractor (“**General Contractor**”) and Major Subcontractors for the Scope shall be subject to the prior approval of the FCRHA, which approval shall not be unreasonably withheld, conditioned or delayed. A “**Major Subcontractor**” shall mean any subcontractor performing work the cost of which is in excess of ten percent (10%) of the total cost of constructing the Scope, as set forth in the Budget (as defined below). Contracts for the Scope must be separate from contracts for the vertical construction of the Affordable Housing Units. The bidding process and criteria are to be discussed.

- D. **FCRHA Funding.** If, and only if, (1) the sale of the Sale Property occurs, (2) the Ground Leases are executed, (3) the FCRHA has approved the Budget (as defined below), and (4) the FCRHA receives the full sales price of under the Purchase Agreement, the FCRHA will contribute \$14,000,000, subject to the Budget and invoicing, for the Scope (“**FCRHA Infrastructure Funding**”). The FCRHA Infrastructure Funding shall only be utilized for the following Scope costs: (1) hard costs of construction; and (2) fees paid to third party construction administration consultants. The FCRHA Infrastructure Funding shall not be applied to any developer fee, to costs of the preparation or obtaining of site plan or other regulatory approvals, or to general design costs. CHPPENN shall make monthly draw requests for the FCRHA Infrastructure Funding, and such requests shall only seek reimbursement for the Scope completed to date, unless otherwise permitted by the Development Agreement.
- E. **CDBG.** CHPPENN acknowledges and agrees that the FCRHA Infrastructure Funding is comprised of Community Development Block Grant (“**CDBG**”) program income. CHPPENN therefore will construct the Scope in accordance with all applicable CDBG laws, rules, and regulations, and take such other steps as may be required by the same. CHPPENN shall provide or cause to be provided to the FCRHA certifications evidencing this compliance, in forms to be appended to the Development Agreement. In no event will CHPPENN apply any FCRHA Infrastructure Funding to work performed on the Sale Property.
- F. **Budget.** CHPPENN shall prepare a budget for the Scope (“**Budget**”). The Budget shall be reasonably detailed, shall include a 10% contingency, and shall be submitted to the FCRHA for its review and approval prior to the FCRHA’s contribution of the FCRHA Infrastructure Funding. The parties acknowledge and agree (i) that the FCRHA shall not be required to disburse any FCRHA Infrastructure Funding until an approved Budget has been agreed upon between the parties, (ii) that the contingency will be paid only if contingency-eligible expenses are actually incurred, and (iii) any cost overruns for the Scope above the applicable Budget amount shall be the responsibility of CHPPENN.
- G. **Development Approvals.** CHPPENN shall consult and coordinate with the FCRHA regarding all submissions to be made in connection with efforts to obtain all required government approvals for the Scope. Further, CHPPEN shall submit its proposed application for each such approval to the FCRHA for its review and approval, subject to an agreed-upon milestone schedule. The FCRHA’s approval shall not be unreasonably withheld, conditioned, or delayed.
- H. **Supervision.** CHPPENN shall supervise, direct and coordinate the construction of the Scope using its best skill and attention. CHPPENN acknowledges that CHPPENN shall be solely responsible for all construction methods, techniques and procedures employed by CHPPENN, its agents, contractors and subcontractors in connection with the construction of the Scope.

- I. **Compliance.** CHPENN shall cause the Scope to be designed and constructed in a good and workmanlike manner, and in compliance with all applicable laws, licensing requirements, and governmental approvals, including, without limitation, the Land Use Approvals and the Proffers, and to produce fully connected, complete, operational and functional systems such that the Affordable Housing Units are fully able to be constructed as vertical construction prior to and without full development of the remainder of the Project. CHPENN shall arrange for the provision of payment and performance bonds in accordance with the PPEA statute.
- J. **Insurance.** CHPENN acknowledges and agrees that it will be required, pursuant to the Development Agreement to maintain or cause to be maintained the following types of insurance (amounts to be negotiated in the Development Agreement):
- i. Workers Compensation Insurance;
 - ii. Employer Liability insurance;
 - iii. “All Risk” Builders Risk Insurance;
 - iv. Errors and Omissions Insurance;
 - v. Business Automobile Liability Insurance; and
 - vi. Commercial General Liability Insurance.
- K. **Cooperation regarding Sale Property.** CHPENN agrees that it will cooperate with the Purchaser of the Sale Property to determine each parties’ respective responsibilities with respect to the retaining wall to ensure the design of each parties’ portion of the retaining wall is generally consistent in appearance and material with the other, and satisfies any governmental and regulatory approvals, including, without limitation, the Land Use Approvals and the Proffers.
- L. **Warranties to the FCRHA; Inspections.** All warranties for the Scope shall run to the FCRHA as well as CHPENN. The contract with the General Contractor shall provide for the ability of the FCRHA to access the Ground Lease Premises, inspect the construction of the Scope, and discuss with the General Contractor and CHPENN.
- M. **Completion of Scope.** CHPENN agrees that construction of the Scope will begin promptly after Closing and shall be completed no later than eighteen (18) months after Closing.
- N. **THE FCRHA’s Termination Right and Damages.** If CHPENN defaults under the Development Agreement, following an appropriate cure period, the FCRHA shall have the right, by sending written notice to CHPENN, to terminate the Development Agreement. In the event of a termination of the Development Agreement, CHPENN will not be entitled to reimbursement of any FCRHA Infrastructure Funding previously expended by CHPENN, *provided however*, the FCRHA shall reimburse any and all FCRHA Infrastructure Funding incurred and paid for by CHPENN and for which it is entitled to reimbursement for the period up to the date of such termination (but with the submission by CHPENN of an invoice complying with the requirements of the Development Agreement) and shall pay to CHPENN any other obligations accrued by CHPENN under the Scope as of the date of termination. Any retainage on the date of

termination shall be forfeited by CHPPENN and retained by the FCRHA. The parties agree that the FCRHA's damages upon such termination, shall include, but shall not be limited to, the costs to complete the Scope, the provision to the FCRHA of Project development documents, and any other remedies available at law or equity. These damages shall be set forth in the Development Agreement.